

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Asbestos Products Liability Litigation (No. VI); MDL 875

Regarding:
THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

GRADY HUMPHREYS, ET AL.)	
)	
PLAINTIFFS)	
)	
V.)	CIVIL ACTION NO. 2:07-607
)	
A.O. SMITH ELECTRICAL)	
PRODUCTS, CO., ET AL.)	
)	
DEFENDANTS)	

MOTION FOR PARTIAL SUMMARY JUDGEMENT

COME NOW Borg-Warner Corporation by its Successor in Interest, BorgWarner Morse TEC, Inc.; Exteco, Inc. f/k/a Thermo Electric Co. Inc.; and The Marley-Wylain Company d/b/a Weil-McLain Company, Inc. (hereinafter "Moving Defendants") and hereby move this Court for partial summary judgment in their favor and against certain Plaintiffs in this case. As grounds thereof, Moving Defendants would show unto the Court as follows:

1. There are nine plaintiffs in this case. Moving Defendants seek summary judgment and dismissals of the claims of three Plaintiffs on two grounds.
2. Moving Defendants are NOT seeking summary judgment against the following plaintiffs at the current time: Grady Humphreys, Bobby Essary, Billy Ray Gann, Billy Lawson Hubert E. Varnon, and Linda Jane Perry Wells.

Undisputed Material Facts

3. As shown at Exhibit 1, **Kathy Ivey** died on July 23, 2005, in Franklin County, Alabama. As shown at Exhibit 2, no estate had been established for Kathy Ivey as of March 28, 2008. As now more than two years has expired since Ms. Ivey's death, her claims for damages in this suit are barred by the Alabama statute of limitations.

4. Plaintiff **Jimmy C. Johnson**'s last date of alleged exposure was in 1974. (See Complaint, Paragraph 5). Thus, the "discovery rule" of Ala. Code § 6-2-30(b) does not apply, since his alleged last exposure was prior to May 19, 1979 and his claims for damages in this suit are barred by the Alabama statute of limitations.

5. As shown at Exhibit 1, **John Wesley Faulker** died on July 4, 2005, in Calhoun County, Alabama. As shown at Exhibit 2, no estate had been established for John Wesley Faulker as of March 27, 2008. As now more than two years has expired since Mr. Faulkner's death, his claims for damages in this suit are barred by the Alabama statute of limitations.

6. Attached as Exhibit 3 is the Schedule of Parties required by MDL Rule 7.2 (a)(ii).

Conclusion

7. Moving Defendants contend that there is no genuine issue as to any material fact and that they are entitled to a judgment as a matter of law for the claims of the three Plaintiffs described herein.

WHEREFORE, PREMISES CONSIDERED, Moving Defendants respectfully request that their Motion for Partial Summary Judgment be granted as to the claims of the three Plaintiffs outlined herein, and that the claims against Moving Defendants and all other Defendants be dismissed with prejudice.

Respectfully submitted,

BORG-WARNER CORPORATION BY ITS
SUCCESSOR IN INTEREST, BORGLARNER
MORSE TEC, INC.; EXTECO, INC. F/K/A
THERMO ELECTRIC CO. INC.; and THE
MARLEY-WYLAIN COMPANY D/B/A WEIL-
MCLAIN COMPANY, INC.

s/Rocky W. Eaton (EAT002)
COUNSEL FOR SAID DEFENDANTS

Of Counsel:

Rocky W. Eaton, EAT002

Aultman, Tyner, Ruffin & Swetman, Ltd.
315 Hemphill Street
P. O. Box 750
Hattiesburg, MS 39401
Phone: 601-583-2671
Facsimile: 601-583-2677

CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of April, 2008 served a copy of the above and foregoing by electronic means via the CM/ECF to those registered with the CM/ECF.

s/ Rocky W. Eaton

Exhibit 1

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Social Security Death Index Search Results

81,074,156 Records
last updated on 2-22-2008

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Field	Value	Records	Results
Last Name	IVEY	7368	7368
First Name	KATHY	8072	1




Viewing 1-1 of 1

Name	Birth	Death	Last Residence	Last Benefit	SSN	Issued	Tools	Order Record?
KATHY H IVEY	 1954	23 Jul 2005 (V)	35582 (Red Bay, Franklin, AL)	(none specified)	-4477	Alabama	SS-5 Letter Add Post-em Search Ancestry.com	

Viewing 1-1 of 1

(V)=(Verified) Report verified with a family member or someone acting on behalf of a family member.
(P)=(Proof) Death Certificate Observed.

Last name	<input type="text" value="IVEY"/>	Exact <input type="checkbox"/>
First Name	<input type="text" value="KATHY"/>	
Middle Name	<input type="text"/>	(initial)
SSN	<input type="text"/>	
Last Residence		
Zip	<input type="text"/>	<input type="text"/>
State	<input type="text"/>	<input type="text"/>
County	<input type="text"/>	<input type="text"/>
City	<input type="text"/>	<input type="text"/>
Birth		
Year	<input type="text"/>	Month <input type="text" value="Any"/> Day <input type="text" value="Any"/>
Death		
Year	<input type="text"/>	Month <input type="text" value="Any"/>
Issue	<input type="text" value="Any State"/>	

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	SS-5 Letter Add Post-em Search Ancestry.com	
JOHN W FAULKNER	[REDACTED] 1934	04 Jul 2005 (V)	36271 (Ohatchee, Calhoun, AL)	(none specified)	[REDACTED]-9548 Alabama	SS-5 Letter Add Post-em Search Ancestry.com	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	SS-5 Letter Add Post-em Search Ancestry.com	

Viewing 1-10 of 10

(V)=(Verified) Report verified with a family member or someone acting on behalf of a family member.

(P)=(Proof) Death Certificate Observed.

Last name	<input type="text" value="FAULKNER"/>	Exact <input type="checkbox"/>
First Name	<input type="text" value="JOHN"/>	
Middle Name	<input type="text"/>	(initial)
SSN	<input type="text"/>	
Last Residence		Last Benefit
Zip	<input type="text"/>	<input type="text"/>
State	<input type="text" value="AL"/>	<input type="text"/>
County	<input type="text"/>	<input type="text"/>
City	<input type="text"/>	<input type="text"/>
Birth		
Year	<input type="text"/>	Month <input type="text" value="Any"/> Day <input type="text" value="Any"/>
Death		
Year	<input type="text"/>	Month <input type="text" value="Any"/>
Issue	<input type="text" value="Any State"/>	
<input type="button" value="Submit"/> <input type="button" value="Clear"/> <input type="button" value="Simple Search"/>		

CPU seconds used 0.169975

For more info about the SSDI, see <http://www.rootsweb.com/~rwguide/lesson10.htm>For help using the SSDI search, see [Problem solving](#)RootsWeb is funded and supported by [Ancestry.com](#) and our loyal RootsWeb community. [Learn more.](#)[About Us](#) | [Contact Us](#) | [Acceptable Use Policy](#) | [PRIVACY STATEMENT](#) | [Copyright](#)

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Exhibit 2


STATE OF MISSISSIPPI
COUNTY OF FORREST

AFFIDAVIT OF BRIDGET SMITH

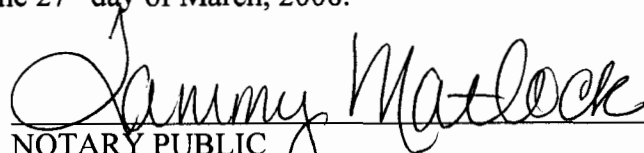
My name is Bridget Smith and I have personal knowledge of the matters in this affidavit.

On March 27, 2008, I placed a telephone call to the clerk of the Probate Court of Calhoun County, Alabama, requesting information on any estate that may have been established for John W. Faulkner. I was informed by Deputy Probate Clerk, Sherry Green, no estate had been established for John W. Faulkner in the Probate Court of Calhoun County, Alabama.

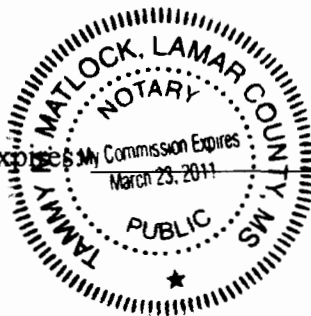
FURTHER AFFIANT SAYETH NAUGHT.


Bridget Smith

Sworn to and subscribed before me on this the 27th day of March, 2008.


NOTARY PUBLIC

My Commission Expires



STATE OF MISSISSIPPI
COUNTY OF FORREST

AFFIDAVIT OF BRIDGET SMITH

My name is Bridget Smith and I have personal knowledge of the matters in this affidavit.

On March 28, 2008, I placed a telephone call to the clerk of the Probate Court of Franklin County, Alabama, requesting information on any estate that may have been established for Kathy H. Ivey. I was informed by Deputy Probate Clerk, Dianne Miller, no estate had been established for Kathy H. Ivey in the Probate Court of Franklin County, Alabama.

FURTHER AFFIANT SAYETH NAUGHT.


Bridget Smith

Sworn to and subscribed before me on this the 28th day of March, 2008.

My Commission Expires

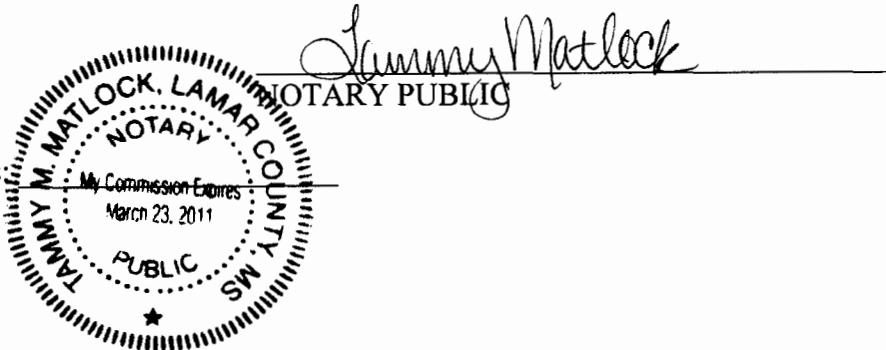


Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: ASBESTOS PRODUCTS
LIABILITY LITIGATION (NO. VI)**

CIVIL ACTION NO.: MDL 875

This Document Relates to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

GRADY HUMPHREYS, ET AL.

PLAINTIFFS

V.

A.O. SMITH ELECTRICAL
PRODUCTS, CO., ET AL.

DEFENDANTS

CIVIL ACTION NO. 2:07-607

SCHEDULE

U.S. District Court
Middle District of Alabama
CIVIL DOCKET FOR CASE #: 2:07-607

Assigned to: Judge William Keith Watkins

GRADY O. HUMPHREYS;

BOBBY ESSARY;

BILLY RAY GANN;

JEAN BALL, mother and personal representative for the ESTATE OF KATHY IVEY, deceased;

JIMMY C. JOHNSON;

SHIRLEY KELLER, daughter and personal representative for the ESTATE OF JOHN
WESLEY FAULKNER, deceased;

BILLY LAWSON, spouse and personal representative for the ESTATE OF DESSIE LAWSON, deceased;

HUBERT E. VARNON;

LINDA JANE PERRY WELLS, spouse and personal representative for the ESTATE OF BILLY RAY WELLS, deceased;

VS.

A.O. SMITH ELECTRICAL PRODUCTS COMPANY, a division of A.O. SMITH CORPORATION;

A.O. SMITH CORPORATION;

ALBANY INTERNATIONAL;

ALLIS-CHALMERS CORPORATION
PRODUCT LIABILITY TRUST;

AMERICAN OPTICAL CORPORATION;

AMERICAN STANDARD, INC.;

ANCHOR DARLING VALVE COMPANY;

ANCHOR PACKING COMPANY;

ARVINMERITOR, INC.; .

ASTEN JOHNSON, INC., individually and as successor-in-interest to ASTEN, INC., successor in-interest by way of name change to ASTEN GROUP, INC., formerly trading as ASTEN-HILLS MANUFACTURING CO.;

A.W. CHESTERTON COMPANY;

BAYER CROPSCIENCE, INC., individual and as successor to AVENTIS CROPSCIENCE USA, INC. f/k/a RHONE-POULENCE AG CO., f/k/a AMCHEM, PRODUCTS, INC., BENJAMIN FOSTER CO.;

BELL & GOSSETT, a subsidiary of ITT INDUSTRIES;

BECHTEL CONSTRUCTION
COMPANY;

BONDEX INTERNATIONAL INC.;

BORG WARNER CORPORATION by its successor in interest, BORGWARNER MORSE TEC INC.;

BP AMERICA, as successor in interest to AMOCO CHEMICAL COMPANY, AMOCO CHEMICALS COMPANY, PLASKON ELECTRONIC MINERALS, AVISUNCORP., CARBORUNDUM, ATLANTIC RICHFIELD COMPANY/ARCO METALS, as successor in interest to ANACONDA AMERICAN BRASS COMPANY, AMERICAN BRASS COMPANY, and ANACONDA COMPANY;

BP AMOCO CHEMICAL COMPANY;

BRANDON DRYING FABRICS, INC.;

BUFFALO PUMP INC.;

CLARK-RELIANCE CORPORATION;

CLEAVER BROOKS, a division of AQUA CHEM;

CONWED CORPORATION;

COOPER INDUSTRIES, LLC, f/n/a COOPER INDUSTRIES, INC., individually and as successor-in-interest to CROUSE-HINDS;

CRANE CO., individually and as successor in interest to DEMING PUMP, CYCLOTHERM, HYDRO-AIRE, LEAR ROMEC, RESISTOFLEX, SWARTWOUT CO., STOCKHAM VALVE COMPANY, WEINMAN PUMP COMPANY, CHEMPUMP, and BURKS PUMPS;

CRANE PUMPS SYSTEMS, individually and as successor to all pump companies acquired by CRANE;

CROWN CORK & SEAL COMPANY, INC.;

CUTLER HAMMER, currently referred to as EATON ELECTRICAL, INC.;

EATON CORPORATION;

EMERSON ELECTRIC CO.;

EXTECO, INC., f/k/a THERMO ELECTRIC CO., INC.;

FMC CORPORATION, individually and on behalf of its former CONSTRUCTION EQUIPMENT GROUP, and former PEERLESS PUMP DIVISION, COFFIN TURBO PUMPS, and CHICAGO PUMP, business;

FLAME REFRACTORIES, INC.;

FOSECO, INC.;

FOSTER-WHEELER CORPORATION;

GARLOCK SEALING TECHNOLOGIES L.L.C.;

GENERAL ELECTRIC CO.;

GEORGIA PACIFIC CORPORATION;

GOODYEAR TIRE AND RUBBER CO.;

GOULDS PUMPS INC.;

GUARD LINE INC.;

HARNISCHFEGGER CORPORATION;

HOBART BROTHERS COMPANY;

HONEYWELL, INC., specifically excluding liability for NARCO, individually and as Successor to ALLIED SIGNAL, BENDIX, WHEELABRATOR, RUST ENGINEERING, AND ALLIED CHEMICAL;

IMO INDUSTRIES, INC., formerly IMO DE LAVAL, formerly TRANSAMERICA DE LAVAL TURBINE;

INDUSTRIAL HOLDINGS CORPORATION, f/k/a THE CARBORUNDUM COMPANY;

INGERSOLL-RAND COMPANY;

ITT INDUSTRIES INC.;

JOHN CRANE, INC., f/k/a JOHN CRANE PACKING COMPANY;

KAISER GYPSUM COMPANY, INC.;

KELLY-MOORE PAINT COMPANY, INC.;

THE LINCOLN ELECTRIC COMPANY;

MAREMONT CORPORATION;

METROPOLITAN LIFE INSURANCE COMPANY;

NATIONAL SERVICES INDUSTRIES;

NIKKO MATERIALS USA, INC., d/b/a GOULD ELECTRONICS, INC., individually and as successor in interest to GOULDS, INC., IMPERAL CORPORATION, EASTMAN CORPORATION, IMPERIAL EASTMAN CORPORATION, ITE CIRCUIT BREAKER COMPANY, and CENTURY ELECTRIC;

OAKFABCO, INC.;

OGLEBAY NORTON COMPANY;

OWENS-ILLINOIS, INC.;

P&H CRANES;

PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION;

RAPID AMERICAN CORPORATION;

RILEY STOKER, INC., F/K/A BABCOCK BORSIG POWER, INC.

ROCKBESTOS-SUPRENTANT CABLE CORPORATION;

ROCKWELL AUTOMATION, successor by merger to ALLEN-BRADLEY CO., LLC;

SCHNEIDER ELECTRIC INDUSTRIES, S.A.S. NORTH AMERICAN DIVISION;

SEPCO CORPORATION;

SQUARE D COMPANY;

SUNBEAM PRODUCTS INCORPORATED, f/k/a SUNBEAM CORPORATION;

SURFACE COMBUSTION;

TH AGRICULTURE & NUTRITION, LLC;

THIEM CORPORATION;

THE MARLEY-WYLAIN COMPANY, d/b/a WELL-MCLAIN COMPANY, INC.;

UNION CARBIDE CORPORATION;

UNIROYAL FIBER AND TEXTILE &
DIVISION OF UNIROYAL, INC.;

UNITED STATES STEEL CORPORATION;

VIACOM INC., successor by merger to CBS CORPORATION f/k/a WESTINGHOUSE
ELECTRIC CORPORATION;

WARREN PUMPS, INC.;

ZURN INDUSTRIES, INC.;

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Asbestos Products Liability Litigation (No. VI); MDL 875

Regarding:
THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

GRADY HUMPHREYS, ET AL.)	
)	
PLAINTIFFS)	
)	
V.)	CIVIL ACTION NO. 2:07-607
)	
A.O. SMITH ELECTRICAL)	
PRODUCTS, CO., ET AL.)	
)	
DEFENDANTS)	

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGEMENT

CAME ON FOR CONSIDERATION the MOTION FOR PARTIAL SUMMARY JUDGEMENT filed by Borg-Warner Corporation by its Successor in Interest, BorgWarner Morse TEC, Inc.; Exteco, Inc. f/k/a Thermo Electric Co. Inc.; and The Marley-Wylain Company d/b/a Weil-McLain Company, Inc. The Court, having fully considered said Motion, and otherwise being fully advised in the premises, finds that the Motion is well-taken and should be granted.

IT IS, THEREFORE, ORDERED that the Complaint, all amendments thereto, and all claims and causes of actions encompassed by the Complaint, and amendments thereto, including all claims or causes of action which were, or might have been,

asserted by Plaintiffs Jean Hall, mother and personal representative for the Estate of Kathy Ivey, deceased; Jimmy C. Johnson; and Shirley Keller, daughter and personal representative for the Estate of John Wesley Faulkner, deceased, against ALL DEFENDANTS, shall be and the same are hereby dismissed with prejudice, with each party to bear their own costs of the Court.

SO ORDERED this the ____ day of _____, 20__.

HONORABLE JAMES T. GILES, U.S.D.J.

SUBMITTED BY:

Thomas W. Tyner, MSB # 8170
Christopher O. Massenburg, MSB # 100182
Rocky W. Eaton, MSB # 9632
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